

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|---------------------------------------|---|-----------------|
| THE APPLICATION OF METROPOLITAN FIBER |) | |
| SYSTEMS OF KENTUCKY, INC. FOR A |) | |
| CERTIFICATE OF PUBLIC CONVENIENCE AND |) | CASE NO. 94-093 |
| NECESSITY TO PROVIDE INTRASTATE |) | |
| TELECOMMUNICATIONS SERVICES AND TO |) | |
| CONSTRUCT FACILITIES |) | |

O R D E R

On March 4, 1994, Metropolitan Fiber Systems of Kentucky, Inc. ("MFS") submitted an application for a Certificate of Public Convenience and Necessity to provide intrastate telecommunications services and to construct facilities. After resolving deficiencies in its filing, the application was officially filed on April 21, 1994. MFS is a Delaware corporation with its principal offices in the state of Illinois and intends to provide interexchange, high capacity, fiber transmission services, known as special access and private line, to telecommunications customers in the Commonwealth of Kentucky.

The proposed services will compete directly with local exchange carriers' ("LEC") access services used primarily for the interconnection of end-users and Interexchange Carrier ("IXC") points-of-presence ("POP"). Initially, MFS proposes to construct facilities in the City of Louisville and Jefferson County but ultimately plans to extend service statewide.

On August 9, 14, and 25, 1994, BellSouth Telecommunications, Inc. d/b/a South Central Bell Telephone Company ("SCB"), AT&T

Communications of the South Central States, Inc. ("AT&T") and MCI Telecommunications Corporation ("MCI"), respectively, filed motions to intervene in this proceeding. All motions to intervene were granted and a public hearing was held on April 27, 1995.

SCB asserts that this proceeding should be used to develop the conditions under which intraLATA interexchange private line services will be offered by an entity other than an IXC and to establish the rules and conditions for competitive intrastate special access services. SCB opposes competitive intraexchange private line services without consideration by the Commission of the broader issues involved. AT&T and MCI support the application filed by MFS which they claim will introduce competition in access services and bring substantial benefits to consumers.

MFS does not currently seek authority to provide intraexchange telecommunications services, either switched or non-switched. Although MFS is aware of Administrative Case No. 323¹ in which the Commission ordered that the geographic scope of competition will extend to but not within the local calling area, MFS opposes any decision that would preclude it from providing interexchange special access and private line services within a local calling area. MFS argues that it should not be prohibited from originating and terminating its services within a local calling area because such a prohibition would, as a practical matter, reduce or

¹ Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality, Order Dated May 6, 1991.

eliminate its ability to service end-users. MFS further stated that it would seek reconsideration of such a decision in another context.²

The Commission finds that MFS should be prohibited from providing services which originate and terminate within an exchange or local calling area. MFS is participating in Administrative Case No. 355,³ which the Commission has initiated to investigate the feasibility of local competition. All interested parties will have an opportunity to discuss the provision of telecommunications services within exchanges and local calling areas. Any decisions in that proceeding may affect the authority granted herein.

To address this issue, MFS filed its July 21, 1994 response to Item 2 of the Commission's June 27, 1994 Order which stated, in part:

MFS proposes only to offer private line and special access services in Kentucky. MFS will not have a switch and hence will have no switching capacity whatsoever. Accordingly, it will be physically impossible for MFS to offer switched local exchange service. With respect to non-switched, dedicated private line service, MFS will not lease a dedicated circuit to an end-user with knowledge of the end-user's intention to substitute the circuit for local exchange service. In no circumstances would it be possible for an end-user to utilize the MFS network to provision such service in whole part, since MFS controls both non-switched dedicated transmission paths on its network, and also the electronics, and will not under any circumstances itself

² Transcript of Evidence, at Pages 62-63.

³ Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate.

provide end-user to end-user service that terminates within an exchange. Nor will MFS solicit, or provide, jurisdictionally intrastate intraexchange service between end-user and IXC POP, or IXC POP to IXC POP.

This or similar language should be added at Original Sheet No. 22, Section 2.2, Prohibited Uses, of MFS's proposed tariff filed March 4, 1994, to indicate clearly that MFS is strictly prohibited from facilitating, in whole or in part, any telecommunications services within an exchange or local calling area and that any violation will result in immediate termination of the customer's service.

The Commission finds that MFS should be granted statewide operating authority. In addition to the limitation set forth above, MFS should submit a written notice, which refers to this proceeding, to the Commission at least 60 days in advance of any proposed construction beyond that approved in this Order. The notice should explicitly describe the routes and extent of facilities to be constructed. This notice will inform the Commission of MFS's proposed extension of service and offer an opportunity for affected entities to request additional consideration by the Commission.

MFS has demonstrated its financial, managerial, and technical capability to provide utility service. The Commission finds that MFS should be authorized to provide intrastate interexchange telecommunications services and to construct facilities within the Commonwealth of Kentucky, as described in this Order and its application and with the restrictions herein.

MFS filed its proposed tariff on March 4, 1994. The Commission further finds that the rates proposed by MFS, with the modification mentioned above, should be approved as the fair, just, and reasonable rates to be charged.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, HEREBY ORDERS that:

1. MFS is granted authority to provide intrastate interexchange non-switched telecommunications services and to construct facilities within the Commonwealth of Kentucky as described herein and in its application, on and after the date of this Order.

2. MFS shall notify the Commission, as described herein, at least 60 days prior to any additional construction beyond that approved in this Order.

3. MFS's authority to provide service is strictly limited to those services described herein and its application. In addition, MFS is prohibited from facilitating, in whole or in part, special access or private line services that originate and terminate within an exchange or local calling area and from providing any switched services.

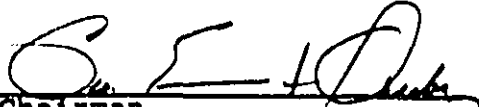
4. The rates proposed by MFS on March 4, 1994, with the modification contained herein, are hereby approved.


5. Within 30 days from the date of this Order, MFS shall file pursuant to 807 KAR 5:011 its March 4, 1994 tariff sheets with the modification contained herein.

6. The authority granted herein is subject to modification by the Commission's decisions in Administrative Case No. 355.

Done at Frankfort, Kentucky, this 25th day of August, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director